In the High Court of Judicature at Madras

Dated: 12.08.2005

Coram:

The Honourable Mr.Justice P.SATHASIVAM

Civil Revision Petition (NPD) No.1087 of 2004

Jayantilal ..Petitioner

..vs..

Chandrakant N.Pandya ..Respondent

Civil Revision Petition filed under section 115 of Civil Procedure Code against the Order dated 11.12.2003 made in E.A.No.3816 of 2002 in E.P.No.966 of 2002 in O.S.No.7105 of 1980 on the file of X Assistant Judge, City Civil Court, Madras.

For Petitioner : Mr.Sandeep Shah

For Respondent : Mr.C.D.Trivedi

ORDER

The civil revision petition has been preferred against the order of the learned X Assistant Judge, City Civil Court, Madras, dated 11.12.2003 made in E.A.No.3816 of 2002 in E.P.No.966 of 2002 in O.S.No.7105 of 1980

2. Heard the learned counsel for both sides.

3. The petitioner is none else than the third defendant, who suffered decree, which has been confirmed up to the level of this Court by dismissing the Second Appeal. It is not in dispute that no further appeal has been filed before the Supreme Court. Thereafter, the petitioner has filed this application under section 47 of Civil Procedure Code, to declare the decree passed in O.S.7105 in 1980 as inexecutable. In support of his petition, the petitioner has very much relied on Ex.P-2, which is a Certificate issued by the Tahsildar, declaring him as a debtor. The learned X Assistant Judge, after finding that the suit was filed against a partnership firm and the petitioner was shown as a partner of the firm and also noting that the petitioner as P.W.1 admitted that he was working as a partner of the firm and also finding that the pronote was executed by the firm, his liability cannot be absolved, dismissed the said application; hence, the present civil revision petition.

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It is not in dispute that the Tahsildar has issued a Certificate Ex.P-2 stating that the petitioner is a debtor. It is the claim of the respondent that the said Certificate came to be issued without notice to the creditor and according to him, the same is not binding. Irrespective of the said stand, I am of the view that, as rightly observed by the court below, inasmuch as the suit was filed against a partnership firm and decree was passed, which was affirmed by the lower appellate court as well as this Court, I am in agreement with the conclusion that even assuming that the petitioner is a debtor in the individual capacity, the liability arose out of the pronote executed by the firm cannot be absolved. I am satisfied that this material aspect has been rightly considered by the court below.

In the light of the abundant factual details, though the learned counsel for the petitioner has referred to decisions of the Supreme Court in support of his claim, I am satisfied that it is unnecessary to refer the same. When facts are clear, there is no need to traverse to the decisions. I do not find any error or infirmity for interference. Accordingly, the civil revision petition fails and the same is dismissed. No costs.

gl

Sd/
Asst.Registrar

/true copy/

Sub Asst.Registrar

To

The Registrar,
Court of Small Causes,
Madras.

+ ONE CC TO MR.S.S.TRIVEDI, ADVOCATE (SR NO 34100)

+ ONE CC TO M/S SHAH & SHAH, ADVOCATES (SR NO 34290)

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